IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1156 OF 2005
WITH
CIVIL APPLICATION NO.1426 OF 2005

Chung Yung Yang Chinese(deceased)
1(a)Mr.Yang Yau Shin & Ors. ..Appellants.

V/s.

D.H.Nanavati. ..Respondent.

Ms. Rohini Pandit for appellants.

Mr.K.D.Shah for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : APRIL 21, 2006.

P.C. :

1. Heard counsel for the parties.

2. I find no reason to depart from the conclusion reached by the court below in taking the view that, in the fact situation of the present case, Section 10 of the C.P.Code cannot be invoked to stay the suit pending before the City Civil Court which was filed in subsequent point of time. The court below has rightly adverted to the reported decisions. The issue raised is no more res integra. The court below has rightly adverted to the exposition in paragraph 3 of the reported Judgment which answers the legal issue against the appellants.

3. To get over this position, counsel for the appellants would contend that the court cannot ignore the explanation VIII occurring in Section 11 of the C.P.Code. The submission clearly overlooks that the purport of section 10 is entirely different. Merely because the opinion recorded in the subsequent suit will bind the parties in the former suit to be tried by the court of limited jurisdiction, does not mean that the subsequent suit cannot proceed on its own merits in accordance with the law. The counsel for the appellant would then contend that the possibility of disposal of suit before the City Civil Court will be far earlier to that of the disposal of the case before the Small Cause Court. That grievance cannot be the scope of this appeal. Hence this appeal as well as civil application are dismissed.